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R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLE 28(9-52)

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2014	March 20, 2014

TITLE 28

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Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases,

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Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

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Perfected security interest survived the secured creditor’s failure to comply with § 11-203 because the secured creditor did not forfeit its security interest by virtue of failing to file a third-party claim, and the doctrine of

quasi-estoppel did not bar the creditor from recovering. The security interest extended to the proceeds which a judgment creditor realized from the sheriff’s sale of the collateral. *Keybank Nat’l Ass’n v. PAL I, LLC*, — Idaho —, 311 P.3d 299 (2013).

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Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

28-12-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

RESEARCH REFERENCES

Idaho Law Review. — Choice of Law in Idaho: A Survey and Critique of Idaho Cases, Andrew S. Jorgensen. 49 Idaho L. Rev. 547 (2013).

CHAPTER 22
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28-22-104. Legal rate of interest.

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Interest.

The plain language of subsection (2) indicates that the mandatory interest rate on an amount due on a judgment is the rate provided in the statute. *Roesch v. Klemann*, — Idaho —, 307 P.3d 192 (2013).

When read together, it is clear that subsection (1) defines only pre-judgment interest and does not apply once a judgment has been entered. The text of subsection (1) refers only to amounts of money due, and there is no mention of judgments. In contrast, subsection (2) expressly provides that it applies to “all

judgments” and makes no distinction about the underlying source of the money due. Additionally, subsection (2) expressly provides that it defines the interest rate for “all judgments,” and, thus, any reading of subsection (1) applying it to amounts due on judgments would negate that part of subsection (2). *Roesch v. Klemann*, — Idaho —, 307 P.3d 192 (2013).

Cited in: *Devries v. Clark* (In re Clark), 2014 Bankr. LEXIS 97 (Bankr. D. Idaho Jan. 10, 2014).

CHAPTER 41

GENERAL PROVISIONS AND DEFINITIONS

PART 2. SCOPE AND JURISDICTION

SECTION.

28-41-201. Territorial application.

PART 2. SCOPE AND JURISDICTION

28-41-201. Territorial application. — (1) Except as otherwise provided in this section, this act applies to sales and loans made in this state and to modifications, including refinancings, consolidations, and deferrals made in this state, of sales and loans, wherever made. For purposes of this act, a sale, loan or modification of a sale or loan is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means including, but not limited to, mail, brochure, telephone, print, radio, television, internet or any other electronic means.

(2) Notwithstanding subsection (1)(b) of this section, unless made subject to this act by agreement of the parties, a sale, loan or modification of a sale or loan is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) The part on limitations on creditors' remedies, part 1 of the chapter on remedies and penalties, chapter 45, title 28, Idaho Code, applies to actions or other proceedings brought in this state to enforce rights arising from regulated credit sales or regulated loans, or extortionate extensions of credit, wherever made.

(4) If a regulated credit sale or regulated loan or modification thereof, is made in another state to a person who is a resident of this state when the sale, loan or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A seller, lender or assignee of his rights may not collect charges through actions or other proceedings in excess of those permitted by chapter 42, title 28, Idaho Code, on finance charges and related provisions; and

(b) A seller, lender or assignee of his rights may not enforce rights against the buyer or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices, part 3, chapter 43, title 28, Idaho Code.

(5) Except as provided in subsection (3) of this section, a sale, loan or modification thereof made in another state to a person who was not a resident of this state when the sale, loan or modification was made is valid and enforceable according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this act, the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in

connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this act does not apply if the buyer or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) This act applies if the buyer or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, the following agreements by a buyer or debtor are invalid with respect to regulated credit sales, regulated loans or modifications thereof to which this act applies:

(a) That the law of another state shall apply;

(b) That the buyer or debtor consents to the jurisdiction of another state; and

(c) That fixes venue.

(9) Notwithstanding any other provision in this section, any person who, in this state, advertises, offers or solicits to make a loan for a consumer purpose, or arranges a payday loan for a third party lender, is engaging in business in this state for which a license is required under the Idaho credit code, unless exempt pursuant to section 28-46-301, Idaho Code.

History.

I.C., § 28-41-201, as added by 1983, ch. 119, § 3, p. 264; am. 2002, ch. 301, § 1, p. 858;

am. 2006, ch. 122, § 1, p. 340; am. 2013, ch. 54, § 1, p. 108; am. 2014, ch. 97, § 10, p. 265.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 97, substituted “chapter 42, title 28, Idaho Code” for “the chapter” in paragraph (4)(a).

Compiler’s Notes.

The term “this act” throughout this section refers to S.L. 1983, ch. 119, which is compiled as chs. 41 to 49 of this title and § 41-2005.

CHAPTER 44

INSURANCE

PART 1. INSURANCE IN GENERAL

SECTION.

28-44-107. Maximum charge by creditor for insurance.

PART 1. INSURANCE IN GENERAL

28-44-107. Maximum charge by creditor for insurance. — (1) Except as provided in subsection (2) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming

to any rate filings required by law and made by the insurer with the director of the department of insurance.

(2) A creditor who provides credit insurance in relation to open-end credit, as defined in section 28-41-301, Idaho Code, may calculate the charge to the debtor in each billing cycle by applying the current premium rate to:

- (a) The average daily unpaid balance of the debt in the cycle;
- (b) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge, section 28-42-201, Idaho Code, but the specified range shall be the range used for that purpose; or
- (c) The unpaid balances of principal calculated according to the actuarial method.

History.

I.C., § 28-44-107, as added by 1983, ch. 119, § 3, p. 264; am. 2013, ch. 54, § 12, p. 108; am. 2014, ch. 97, § 11, p. 265.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 97, deleted “consumer” following “open-end” in the introductory language of subsection (2).

CHAPTER 46

ADMINISTRATION

PART 4. PAYDAY LOANS

SECTION.

28-46-401. Definitions.

28-46-412. Payday loan procedures.

SECTION.

28-46-413. Payday loan business practices.

28-46-414. Extended payment plans.

28-46-415. Disclosures.

PART 4. PAYDAY LOANS

28-46-401. Definitions. — (1) As used in this act, unless the context otherwise requires, “payday loan” means a transaction pursuant to a written agreement between a creditor and the maker of a check whereby the creditor:

- (a) Accepts a check from the maker;
- (b) Agrees to hold the check for a period of time prior to negotiation, deposit or presentment; and
- (c) Pays to the maker of the check the amount of the check, less the fee permitted by this chapter.

(2) Payday loans are regulated consumer credit transactions, and all provisions of the Idaho credit code relating to regulated loans apply to payday loans and to persons engaged in the business of payday loans except for part 3, chapter 46, title 28, Idaho Code.

(3) As used in this part, “check” refers to a check or the electronic equivalent of a check, including an authorization given by a borrower to a creditor to withdraw an agreed upon amount from any account held by the borrower.

(4) As used in this part, unless the context otherwise requires, “licensee” means a person licensed under this part and all persons required to be licensed under this part.

History.

I.C., § 28-46-401, as added by 2003, ch.

182, § 1, p. 490; am. 2014, ch. 270, § 1, p. 674.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 270, in subsection (3), substituted “this part” for “this section” and added “including an authorization given by a borrower to a creditor to withdraw an agreed upon amount from any account held by the borrower”; and added subsection (4).

Compiler’s Notes.

The term “this act” in the introductory paragraph in subsection (1) refers to S.L. 2003, ch. 182, which is compiled as §§ 28-46-401 through 28-46-413.

28-46-412. Payday loan procedures. — (1) Each payday loan must be documented in a written agreement signed by the borrower. The loan agreement must include the name of the licensee, the loan date, the principal amount of the loan, and a statement of the total amount of fees charged as a condition of making the loan, expressed both as a dollar amount and as an annual percentage rate (APR).

(2) The maximum principal amount of any payday loan is one thousand dollars (\$1000).

(3) A licensee may charge a fee for each payday loan. Such fee shall be deemed fully earned as of the date of the transaction and shall not be deemed interest for any purpose of law. No other fee or charges may be charged or collected for the payday loan except as specifically set forth in this act.

(4) Each licensee shall conspicuously post in each licensed location a notice of the fees, expressed as a dollar amount per one hundred dollars (\$100), charged for payday loans.

(5)(a) A payday loan may be made pursuant to a transaction whereby the licensee:

- (i) Accepts a check from a borrower who is the maker of the check; and
- (ii) Agrees not to negotiate, deposit or present the check for an agreed upon period of time and pays to the maker the amount of the check, less the fees permitted by this act.

(b) In such a transaction, the licensee may accept only one (1) postdated check for each loan as security for the loan. Before the licensee may negotiate or present a check for payment, the check shall be endorsed with the actual name under which the licensee is doing business. The borrower shall have the right to redeem the check from the licensee at any time prior to the presentment or deposit of the check by making payment to the licensee of the full amount of the check in cash or immediately available funds.

(6) The amount advanced to the borrower by the licensee in a payday loan may be paid to the borrower in the form of cash, the licensee’s business check, a money order, an electronic funds transfer to the borrower’s account,

or other reasonable electronic payment mechanism, provided however, that no additional fee may be charged to the borrower by a licensee to access the proceeds of the payday loan.

(7) A payday loan may be repaid by the borrower in cash, by negotiation of the borrower's check in a transaction pursuant to subsection (5) of this section or, with the agreement of the licensee, a debit card, a cashier's check, an electronic funds transfer from the borrower's bank account, or any other reasonable electronic payment mechanism to which the parties may agree.

(8) A payday lender shall not make more than two (2) electronic representments of a borrower's check to a depository institution.

History.

I.C., § 28-46-412, as added by 2003, ch.

182, § 1, p. 490; am. 2014, ch. 270, § 2, p. 674.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 270, deleted former subsection (5), relating to information that should be included in a written notice to a borrower before disbursing a payday loan; redesignated the subsequent subsections accordingly; and added present subsection (8).

paragraph (5)(a)(ii) refers to S.L. 2009, ch. 175, which is codified as this section. The reference probably should be to the Idaho Credit Code, which is generally compiled as chapters 41 to 49, title 28, Idaho Code.

The abbreviation "APR" enclosed in parentheses so appeared in the law as enacted.

Compiler's Notes.

The term "this act" in subsection (3) and

28-46-413. Payday loan business practices. — (1) No licensee or person related to a licensee by common control may have outstanding at any time to a single borrower a loan or loans with an aggregate principal balance exceeding one thousand dollars (\$1,000), plus allowable fees.

(2) A payday lender shall not make a payday loan that exceeds twenty-five percent (25%) of the gross monthly income of the borrower when the loan is made.

(3) A payday lender shall obtain income information from a borrower consistent with subsection (4) of this section not less than once every twelve (12) months.

(4) A payday lender shall not be in violation of subsection (2) of this section if the borrower presents evidence of his gross monthly income to the payday lender or represents to the payday lender in writing that the payday loan does not exceed twenty-five percent (25%) of the borrower's gross monthly income when the loan is made.

(5) No payday loan shall be repaid by the proceeds of another payday loan made by the same licensee or a person related to the licensee by common control.

(6) If the borrower's check is returned unpaid to the licensee from a payor financial institution, the licensee shall have the right to collect charges authorized by section 28-22-105, Idaho Code, provided such charges are disclosed in the loan agreement. A licensee may not charge treble damages. If the borrower's obligation is assigned to any third party for collection, the provisions of this section shall apply to such third party collector.

(7) A licensee, or person required to be licensed pursuant to this part,

shall not threaten a borrower with criminal action as a result of any payment deficit.

(8) No licensee, or person required to be licensed pursuant to this part, shall engage in unfair or deceptive acts, practices or advertising in the conduct of a payday loan business.

(9) A licensee may renew a payday loan no more than three (3) consecutive times, after which the payday loan shall be repaid in full by the borrower. A borrower may enter into a new loan transaction with the licensee at any time after a prior loan to the borrower is completed. A loan secured by a borrower's check is completed when the check is presented or deposited by the licensee or redeemed by the borrower pursuant to section 28-46-412(5), Idaho Code.

(10) Other than a borrower's check in a transaction pursuant to section 28-46-412(5), Idaho Code, a licensee shall not accept any property, title to property, or other evidence of ownership as collateral for a payday loan.

(11) A licensee may conduct other business at a location where it engages in payday lending unless it carries on such other business for the purpose of evading or violating the provisions of this act.

(12) A borrower may rescind the payday loan at no cost at any time prior to the close of business on the next business day following the day on which the payday loan was made by paying the principal amount of the loan to the licensee in cash or other immediately available funds.

History.

I.C., § 28-46-413, as added by 2003, ch.

182, § 1, p. 490; am. 2013, ch. 54, § 6, p. 108; am. 2014, ch. 270, § 3, p. 674.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 270, inserted present subsections (2) through (4) and redesignated the subsequent subsections accordingly.

to S.L. 2009, ch. 175, which is codified as this section. The reference probably should be to the Idaho Credit Code, which is generally compiled as chapters 41 to 49, title 28, Idaho Code.

Compiler's Notes.

The term "this act" in subsection (11) refers

28-46-414. Extended payment plans. — A payday lender shall allow the borrower, upon request, to enter into an extended payment plan that meets the requirements of this section once during any consecutive twelve (12) month period, subject to the following provisions:

(1) A payday lender is not required to enter into an extended payment plan with a borrower more than one (1) time during any consecutive twelve (12) month period.

(2) An extended payment plan shall be in writing and must be executed not later than the day the payday loan is due. The plan shall provide a payment schedule that allows at least four (4) equal payments over a time period of not less than sixty (60) days and shall include the disclosures required under section 28-46-415, Idaho Code.

(3) A borrower's obligations under an extended payment plan shall be not greater than the amount owed under the terms of the original payday loan.

(4) A payday lender shall not charge interest or additional fees as part of

an extended payment plan, except as permitted in section 28-46-413(6), Idaho Code. If a borrower defaults under the extended payment plan, the payday lender may terminate the extended payment plan and accelerate the requirement to pay the amount owed.

(5) A payday lender shall not initiate collection activities against a borrower for a payday loan that is subject to an extended payment plan so long as the borrower is in compliance with the terms of the extended payment plan.

History.

I.C., § 28-46-414, as added by 2014, ch. 270, § 4, p. 674.

28-46-415. Disclosures. — Before disbursing funds pursuant to a payday loan, a payday lender shall provide written notice in not less than twelve (12) point bold type and in all capitalized letters to the borrower stating the following:

- “1. Payday loans are intended to address short-term, not long-term, financial needs.
2. You will be required to pay additional fees if the payday loan is renewed rather than paid in full when due.
3. You have the right to rescind the payday loan at no cost no later than the end of the next business day following the day on which the payday loan is made.
4. Payday loans may contain high-cost features, and borrowers should consider alternative lower-cost loans.
5. If you believe that the lender has violated the law, you may file a written complaint with the Idaho Department of Finance. Filing a complaint does not limit nor impair any rights you may have against the lender.
6. You have a one-time right during any consecutive twelve (12) month period to convert a payday loan into an extended payment plan.”

History.

I.C., § 28-46-415, as added by 2014, ch. 270, § 5, p. 674.

CHAPTER 49

RELATIONSHIP TO OTHER LAWS, EFFECTIVE DATE, AND OVERRIDE OF FEDERAL PREEMPTION

SECTION.

28-49-101. Relationship to other laws.

28-49-101. Relationship to other laws. — (1) All political subdivisions of this state shall be prohibited from enacting and enforcing ordinances, resolutions and regulations pertaining to the financial or lending activities of persons who:

- (a) Are subject to the jurisdiction of the department of finance of the state of Idaho, including activities subject to this chapter;
 - (b) Are subject to the jurisdiction or regulatory supervision of the board of governors of the federal reserve system, the office of the comptroller of the currency, the national credit union administration, the federal deposit insurance corporation, the federal trade commission or the United States department of housing and urban development; or
 - (c) Originate, purchase, sell, assign, securitize or service property interests or obligations created by financial transactions or loans made, executed or originated by persons referred to in subsection (1)(a) or (1)(b) of this section or assist or facilitate such transactions.
- (2) The requirements of this section shall apply to all ordinances, resolutions and regulations pertaining to financial or lending activities, including any ordinances, resolutions or regulations disqualifying persons from doing business with a political subdivision based upon financial or lending activities or imposing reporting requirements or any other obligations upon persons regarding financial or lending activities.

History. 301, § 8, p. 858; am. 2014, ch. 97, § 12, p. I.C., § 28-49-101, as added by 2002, ch. 265.

STATUTORY NOTES

Amendments. The 2014 amendment, by ch. 97, deleted “the office of thrift supervision” following “comptroller of the currency” in paragraph (1)(b).

Federal References. The board of governors of the federal reserve system, referred to in paragraph (1)(b), is created at 12 U.S.C.S. § 241.

The office of the comptroller of the currency, referred to in paragraph (1)(b), is established at 12 U.S.C.S. § 1.

The national credit union administration, referred to in paragraph (1)(b), is established at 12 U.S.C.S. § 1752a.

The federal deposit insurance corporation, referred to in paragraph (1)(b), is established at 12 U.S.C.S. § 1811.

The federal trade commission, referred to in paragraph (1)(b), is established at 15 U.S.C.S. § 41.

The department of housing and urban development, referred to in paragraph (1)(b), is established at 5 U.S.C.S. § 101. See 12 U.S.C.S. § 1701 et seq.

CHAPTER 51

IDENTITY THEFT

SECTION.
28-51-105. Disclosure of breach of security of computerized personal information by an agency, individual or a commercial entity.

28-51-105. Disclosure of breach of security of computerized personal information by an agency, individual or a commercial entity. — (1) A city, county or state agency, individual or a commercial entity that conducts business in Idaho and that owns or licenses computerized data that includes personal information about a resident of Idaho shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation

determines that the misuse of information about an Idaho resident has occurred or is reasonably likely to occur, the agency, individual or the commercial entity shall give notice as soon as possible to the affected Idaho resident. Notice must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach, to identify the individuals affected, and to restore the reasonable integrity of the computerized data system.

When an agency becomes aware of a breach of the security of the system, it shall, within twenty-four (24) hours of such discovery, notify the office of the Idaho attorney general. Nothing contained in this section relieves a state agency’s responsibility to report a security breach to the office of the chief information officer within the department of administration, pursuant to the Idaho technology authority policies.

Any governmental employee who intentionally discloses personal information not subject to disclosure otherwise allowed by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for a period of not more than one (1) year, or both.

(2) An agency, individual or a commercial entity that maintains computerized data that includes personal information that the agency, individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately following discovery of a breach if misuse of personal information about an Idaho resident occurred or is reasonably likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach.

(3) Notice required by this section may be delayed if a law enforcement agency advises the agency, individual or commercial entity that the notice will impede a criminal investigation. Notice required by this section must be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency advises the agency, individual or commercial entity that notification will no longer impede the investigation.

History.
I.C., § 28-51-105, as added by 2006, ch.

258, § 1, p. 796; am. 2010, ch. 170, § 1, p. 346; am. 2014, ch. 97, § 13, p. 265.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 97, substituted “Idaho technology authority” for “information technology resource management

council” in the last sentence in the second paragraph of subsection (1); and made minor stylistic changes.

